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7  
8 **BEFORE THE**  
**REGISTRAR OF CONTRACTORS**  
9 **CONTRACTORS' STATE LICENSE BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. N2010-105

12 **ELITE CONSERVATION SERVICES**  
13 **Michael Phong Nguyen, Sole Owner**  
2701 Del Paso Road #130-360  
14 **Sacramento, CA 94551**

**A C C U S A T I O N**

15 **Contractor's License No. 750199, Class B,**  
**C-10, C-17, C-20**

16 **And**

17 **ELITE CONSERVATION SERVICES INC.**  
18 **dba ADVANCED CONSERVATION**  
**SERVICES**  
19 **Michael Phong Nguyen, RMO/CEO/Pres.**  
1106 Windfield Way Ste 2  
20 **El Dorado Hills, CA 95762**

21 **Contractor's License No. 915083, Class B,**  
**C-10, C-20**

22  
23 Respondents.

24  
25 Complainant alleges:

26 **PARTIES**

27 1. Wood Robinson (Complainant) brings this Accusation solely in his official capacity  
28 as the Enforcement Supervisor I of the Contractors' State License Board, Department of

1 Consumer Affairs.

2 2. On or about June 2, 1998, the Registrar of Contractors issued Contractor's License  
3 Number 750199, Class B, C-10, C-17, C-20, to Elite Conservation Services, Michael Phong  
4 Nguyen, sole owner (hereinafter "Respondent Elite"). The Contractor's License was in full force  
5 and effect at all times relevant to this matter, and will expire on June 30, 2012, unless renewed.

6 3. On or about April 30, 2008, the Registrar of Contractors issued Contractor's  
7 License Number 915083, Class B, C-10, C-20, to Elite Conservation Services, Inc., dba  
8 Advanced Conservation Services, Michael Phong Nguyen, RMO/CEO/Pres. (hereinafter  
9 "Respondent Elite Inc.") The Contractor's License was in full force and effect at all times  
10 relevant to this matter, and will expire on June 30, 2012, unless renewed.

### 11 JURISDICTION

12 4. This Accusation is brought before the Registrar of Contractors (Registrar) for the  
13 Contractors' State License Board, Department of Consumer Affairs, under the authority of the  
14 following laws. All section references are to the Business and Professions Code unless otherwise  
15 indicated.

16 5. Section **118(b)** of the Code provides, in pertinent part, that the expiration of a license  
17 shall not deprive the Registrar of jurisdiction to proceed with a disciplinary action during the  
18 period within which the license may be renewed, restored, reissued or reinstated. Under Code  
19 section 7076.1, the Registrar may reinstate a cancelled license if the licensee pays all of the fees  
20 and meets all of the qualifications and requirements for obtaining an original license.

21 6. Section **7076.5** of the Code provides, in pertinent part, that the inactive status of a  
22 license shall not bar any disciplinary action for violating provisions of the Contractors' State  
23 License Law (Bus. & Prof. Code, section 7000, et seq.).

24 7. Section **7090** of the Code provides, in pertinent part:

25 The registrar may upon his or her own motion and shall upon the verified complaint in  
26 writing of any person, investigate the actions of any applicant, contractor, or home improvement  
27 salesperson within the state and may deny the licensure or the renewal of licensure of, or cite,  
28 temporarily suspend, or permanently revoke any license or registration if the applicant, licensee,



1 or registrant, is guilty of or commits any one or more of the acts or omissions constituting causes  
2 for disciplinary action.

3 . . .

4 8. Section **7095** of the Code provides, in pertinent part, that the Registrar in making an  
5 order may:

6 (a) Provide for the immediate complete suspension by the licensee of all operations as a  
7 contractor during the period fixed by the decision.

8 (b) Permit the licensee to complete any or all contracts shown by competent evidence taken  
9 at the hearing to be then uncompleted.

10 (c) Impose upon the licensee compliance with such specific conditions as may be just in  
11 connection with his operations as a contractor disclosed at the hearing and may further provide  
12 that until such conditions are complied with no application for restoration of the suspended or  
13 revoked license shall be accepted by the registrar.

14 9. Section **7097** of the Code states:

15 Notwithstanding the provisions of Sections 7121 and 7122, when any license has been  
16 suspended by a decision of the registrar pursuant to an accusation or pursuant to subdivision (b)  
17 of Section 7071.17, Section 7085.6 or 7090.1, any additional license issued under this chapter in  
18 the name of the licensee or for which the licensee furnished qualifying experience and appearance  
19 under the provisions of Section 7068, may be suspended by the registrar without further notice.

20 10. Section **7098** of the Code states:

21 Notwithstanding the provisions of Sections 7121 and 7122, when any license has been  
22 revoked under the provisions of this chapter, any additional license issued under this chapter in  
23 the name of the licensee or for which the licensee furnished qualifying experience and appearance  
24 under the provisions of Section 7068, may be revoked by the registrar without further notice.

25 11. Section **7106.5** of the Code provides, in pertinent part, that the expiration,  
26 cancellation, forfeiture or suspension of a license by operation of law or by order or decision of  
27 the registrar, or a court of law, or the voluntary surrender of the license shall not deprive the  
28 registrar of jurisdiction to proceed with any investigation of or action or disciplinary proceeding

1 against the license, or to render a decision suspending or revoking the license.

2 12. Section **7121** of the Code states:

3 Any person who has been denied a license for a reason other than failure to document  
4 sufficient satisfactory experience for a supplemental classification for an existing license, or who  
5 has had his or her license revoked, or whose license is under suspension, or who has failed to  
6 renew his or her license while it was under suspension, or who has been a member, officer,  
7 director, or associate of any partnership, corporation, firm, or association whose application for a  
8 license has been denied for a reason other than failure to document sufficient satisfactory  
9 experience for a supplemental classification for an existing license, or whose license has been  
10 revoked, or whose license is under suspension, or who has failed to renew a license while it was  
11 under suspension, and while acting as a member, officer, director, or associate had knowledge of  
12 or participated in any of the prohibited acts for which the license was denied, suspended, or  
13 revoked, shall be prohibited from serving as an officer, director, associate, partner, or qualifying  
14 individual of a licensee, and the employment, election, or association of this type of person by a  
15 licensee in any capacity other than as a nonsupervising bona fide employee shall constitute  
16 grounds for disciplinary action.

17 13. Section **7121.5** of the Code states:

18 Any person who was the qualifying individual on a revoked license, or of a license under  
19 suspension, or of a license that was not renewed while it was under suspension, shall be  
20 prohibited from serving as an officer, director, associate, partner, or qualifying individual of a  
21 licensee, whether or not the individual had knowledge of or participated in the prohibited acts or  
22 omissions for which the license was revoked, or suspended, and the employment, election, or  
23 association of such person by a licensee shall constitute grounds for disciplinary action.

24 14. Section **7122** of the Code states:

25 The performance by any individual, partnership, corporation, firm, or association of any act  
26 or omission constituting a cause for disciplinary action, likewise constitutes a cause for  
27 disciplinary action against any licensee other than the individual qualifying on behalf of the  
28 individual or entity, if the licensee was a member, officer, director, or associate of such



individual, partnership, corporation, firm or association at the time such act or omission occurred, and had knowledge of or participated in such prohibited act or omission.

### **STATUTORY PROVISIONS**

15. Section 7117 of the Code states:

Acting in the capacity of a contractor under any license issued hereunder except: (a) in the name of the licensee as set forth upon the license, or (b) in accordance with the personnel of the licensee as set forth in the application for such license, or as later changed as provided in this chapter, constitutes a cause for disciplinary action.

16. Section 7154 of the Code states:

A home improvement contractor who employs a person to sell home improvement contracts while such person is not registered by the registrar as a home improvement salesman as provided in this article, is subject to disciplinary action by the registrar.

17. Section 7159 of the Code states, in pertinent part:

(a)(1) This section identifies the projects for which a home improvement contract is required, outlines the contract requirements, and lists the items that shall be included in the contract, or may be provided as an attachment.

...

(5) Failure by the licensee, his or her agent or salesperson, or by a person subject to be licensed under this chapter, to provide the specified information, notices, and disclosures in the contract, or to otherwise fail to comply with any provision of this section, is cause for discipline.

(b) For purposes of this section, "home improvement contract" means an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner or between a contractor and a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, if the work is to be performed in, to, or upon the residence or dwelling unit of the tenant, for the performance of a home improvement, as defined in Section 7151, and includes all labor, services, and materials to be furnished and performed thereunder, if the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds

1 five hundred dollars (\$500). "Home improvement contract" also means an agreement, whether  
2 oral or written, or contained in one or more documents, between a salesperson, whether or not he  
3 or she is a home improvement salesperson, and an owner or a tenant, regardless of the number of  
4 residence or dwelling units contained in the building in which the tenant resides, which provides  
5 for the sale, installation, or furnishing of home improvement goods or services.

6 (c) In addition to the specific requirements listed under this section, every home  
7 improvement contract and any person subject to licensure under this chapter or his or her agent or  
8 salesperson shall comply with all of the following:

9 (1) The writing shall be legible.

10 (2) Any printed form shall be readable. Unless a larger typeface is specified in this article,  
11 text in any printed form shall be in at least 10-point typeface and the headings shall be in at least  
12 10-point boldface type.

13 (3)(A) Before any work is started, the contractor shall give the buyer a copy of the contract  
14 signed and dated by both the contractor and the buyer. The buyer's receipt of the copy of the  
15 contract initiates the buyer's rights to cancel the contract pursuant to Sections 1689.5 to 1689.14,  
16 inclusive, of the Civil Code.

17 (B) The contract shall contain on the first page, in a typeface no smaller than that generally  
18 used in the body of the document, both of the following:

19 (i) The date the buyer signed the contract.

20 (ii) The name and address of the contractor to which the applicable "Notice of  
21 Cancellation" is to be mailed, immediately preceded by a statement advising the buyer that the  
22 "Notice of Cancellation" may be sent to the contractor at the address noted on the contract.

23 (4) The contract shall include a statement that, upon satisfactory payment being made for  
24 any portion of the work performed, the contractor, prior to any further payment being made, shall  
25 furnish to the person contracting for the home improvement or swimming pool work a full and  
26 unconditional release from any potential lien claimant claim or mechanic's lien authorized  
27 pursuant to Section 3110 of the Civil Code for that portion of the work for which payment has  
28 been made.



1 (5) A change-order form for changes or extra work shall be incorporated into the contract  
2 and shall become part of the contract only if it is in writing and signed by the parties prior to the  
3 commencement of any work covered by a change order.

4 (6) The contract shall contain, in close proximity to the signatures of the owner and  
5 contractor, a notice stating that the owner or tenant has the right to require the contractor to have a  
6 performance and payment bond.

7 (7) If the contract provides for a contractor to furnish joint control, the contractor shall not  
8 have any financial or other interest in the joint control.

9 (8) The provisions of this section are not exclusive and do not relieve the contractor from  
10 compliance with any other applicable provision of law.

11 (d) A home improvement contract and any changes to the contract shall be in writing and  
12 signed by the parties to the contract prior to the commencement of work covered by the contract  
13 or an applicable change order and, except as provided in paragraph (8) of subdivision (a) of  
14 Section 7159.5, shall include or comply with all of the following:

15 (1) The name, business address, and license number of the contractor.

16 (2) If applicable, the name and registration number of the home improvement salesperson  
17 that solicited or negotiated the contract.

18 (3) The following heading on the contract form that identifies the type of contract in at least  
19 10-point boldface type: "Home Improvement."

20 (4) The following statement in at least 12-point boldface type: "You are entitled to a  
21 completely filled in copy of this agreement, signed by both you and the contractor, before any  
22 work may be started."

23 (5) The heading: "Contract Price," followed by the amount of the contract in dollars and  
24 cents.

25 (6) If a finance charge will be charged, the heading: "Finance Charge," followed by the  
26 amount in dollars and cents. The finance charge is to be set out separately from the contract  
27 amount.

28 (7) The heading: "Description of the Project and Description of the Significant Materials to

1 be Used and Equipment to be Installed,” followed by a description of the project and a description  
2 of the significant materials to be used and equipment to be installed. For swimming pools, the  
3 project description required under this paragraph also shall include a plan and scale drawing  
4 showing the shape, size, dimensions, and the construction and equipment specifications.

5 (8) If a downpayment will be charged, the details of the downpayment shall be expressed in  
6 substantially the following form, and shall include the text of the notice as specified in  
7 subparagraph (C):

8 (A) The heading: “Downpayment.”

9 (B) A space where the actual downpayment appears.

10 (C) The following statement in at least 12-point boldface type:

11 “THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE  
12 CONTRACT PRICE, WHICHEVER IS LESS.”

13 (9) If payments, other than the downpayment, are to be made before the project is  
14 completed, the details of these payments, known as progress payments, shall be expressed in  
15 substantially the following form, and shall include the text of the statement as specified in  
16 subparagraph (C):

17 (A) A schedule of progress payments shall be preceded by the heading: “Schedule of  
18 Progress Payments.”

19 (B) Each progress payment shall be stated in dollars and cents and specifically reference the  
20 amount of work or services to be performed and materials and equipment to be supplied.

21 (C) The section of the contract reserved for the progress payments shall include the  
22 following statement in at least 12-point boldface type:

23 “The schedule of progress payments must specifically describe each phase of work,  
24 including the type and amount of work or services scheduled to be supplied in each phase, along  
25 with the amount of each proposed progress payment. IT IS AGAINST THE LAW FOR A  
26 CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR  
27 MATERIALS NOT YET DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A  
28 DOWNPAYMENT.”



1 (10) The contract shall address the commencement of work to be performed in substantially  
2 the following form:

3 (A) A statement that describes what constitutes substantial commencement of work under  
4 the contract.

5 (B) The heading: "Approximate Start Date."

6 (C) The approximate date on which work will be commenced.

7 (11) The estimated completion date of the work shall be referenced in the contract in  
8 substantially the following form:

9 (A) The heading: "Approximate Completion Date."

10 (B) The approximate date of completion.

11 (12) If applicable, the heading: "List of Documents to be Incorporated into the Contract,"  
12 followed by the list of documents incorporated into the contract.

13 (13) The heading: "Note about Extra Work and Change Orders," followed by the following  
14 statement:

15 "Extra Work and Change Orders become part of the contract once the order is prepared in  
16 writing and signed by the parties prior to the commencement of work covered by the new change  
17 order. The order must describe the scope of the extra work or change, the cost to be added or  
18 subtracted from the contract, and the effect the order will have on the schedule of progress  
19 payments."

20 (e) Except as provided in paragraph (8) of subdivision (a) of Section 7159.5, all of the  
21 following notices shall be provided to the owner as part of the contract form as specified or, if  
22 otherwise authorized under this subdivision, may be provided as an attachment to the contract:

23 (1) A notice concerning commercial general liability insurance. This notice may be  
24 provided as an attachment to the contract if the contract includes the following statement: "A  
25 notice concerning commercial general liability insurance is attached to this contract." The notice  
26 shall include the heading "Commercial General Liability Insurance (CGL)," followed by  
27 whichever of the following statements is both relevant and correct:

28 (A) "(The name on the license or 'This contractor') does not carry commercial general

1 liability insurance.”

2 (B) “(The name on the license or ‘This contractor’) carries commercial general liability  
3 insurance written by (the insurance company). You may call (the insurance company) at  
4 \_\_\_\_\_ to check the contractor's insurance coverage.”

5 (C) “(The name on the license or ‘This contractor’) is self-insured.”

6 (2) A notice concerning workers' compensation insurance. This notice may be provided as  
7 an attachment to the contract if the contract includes the statement: “A notice concerning workers'  
8 compensation insurance is attached to this contract.” The notice shall include the heading  
9 “Workers' Compensation Insurance” followed by whichever of the following statements is  
10 correct:

11 (A) “(The name on the license or ‘This contractor’) has no employees and is exempt from  
12 workers' compensation requirements.”

13 (B) “(The name on the license or ‘This contractor’) carries workers' compensation  
14 insurance for all employees.”

15 (3) A notice that provides the buyer with the following information about the performance  
16 of extra or change-order work:

17 (A) A statement that the buyer may not require a contractor to perform extra or change-  
18 order work without providing written authorization prior to the commencement of work covered  
19 by the new change order.

20 (B) A statement informing the buyer that extra work or a change order is not enforceable  
21 against a buyer unless the change order also identifies all of the following in writing prior to the  
22 commencement of work covered by the new change order:

23 (i) The scope of work encompassed by the order.

24 (ii) The amount to be added or subtracted from the contract.

25 (iii) The effect the order will make in the progress payments or the completion date.

26 (C) A statement informing the buyer that the contractor's failure to comply with the  
27 requirements of this paragraph does not preclude the recovery of compensation for work  
28 performed based upon legal or equitable remedies designed to prevent unjust enrichment.



1 (4) A notice with the heading "Mechanics' Lien Warning" written as follows:

2 [Text of warning omitted]

3 (5) The following notice shall be provided in at least 12-point typeface:

4 [Text of notice omitted]

5 (6)(A) The notice set forth in subparagraph (B) and entitled "Three-Day Right to Cancel,"  
6 shall be provided to the buyer unless the contract is:

7 (i) Negotiated at the contractor's place of business.

8 (ii) Subject to the "Seven-Day Right to Cancel," as set forth in paragraph (7).

9 (iii) Subject to licensure under the Alarm Company Act (Chapter 11.6 (commencing with  
10 Section 7590)), provided the alarm company licensee complies with Sections 1689.5, 1689.6, and  
11 1689.7 of the Civil Code, as applicable.

12 (B) [Text of notice omitted]

13 (C) The "Three-Day Right to Cancel" notice required by this paragraph shall comply with  
14 all of the following:

15 (i) The text of the notice is at least 12-point boldface type.

16 (ii) The notice is in immediate proximity to a space reserved for the owner's signature.

17 (iii) The owner acknowledges receipt of the notice by signing and dating the notice form in  
18 the signature space.

19 (iv) The notice is written in the same language, e.g., Spanish, as that principally used in any  
20 oral sales presentation.

21 (v) The notice may be attached to the contract if the contract includes, in at least 12-point  
22 boldface type, a checkbox with the following statement: "The law requires that the contractor  
23 give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given  
24 you a 'Notice of the Three-Day Right to Cancel.' "

25 (vi) The notice shall be accompanied by a completed form in duplicate, captioned "Notice  
26 of Cancellation," which also shall be attached to the agreement or offer to purchase and be easily  
27 detachable, and which shall contain the following statement written in the same language, e.g.,  
28 Spanish, as used in the contract:

1 [Text of notice omitted]

2 (7)(A) The following notice entitled "Seven-Day Right to Cancel" shall be provided to the  
3 buyer for any contract that is written for the repair or restoration of residential premises damaged  
4 by any sudden or catastrophic event for which a state of emergency has been declared by the  
5 President of the United States or the Governor, or for which a local emergency has been declared  
6 by the executive officer or governing body of any city, county, or city and county:

7 [Text of notice omitted]

8 (B) The "Seven-Day Right to Cancel" notice required by this subdivision shall comply with  
9 all of the following:

10 (i) The text of the notice is at least 12-point boldface type.

11 (ii) The notice is in immediate proximity to a space reserved for the owner's signature.

12 (iii) The owner acknowledges receipt of the notice by signing and dating the notice form in  
13 the signature space.

14 (iv) The notice is written in the same language, e.g., Spanish, as that principally used in any  
15 oral sales presentation.

16 (v) The notice may be attached to the contract if the contract includes, in at least 12-point  
17 boldface type, a checkbox with the following statement: "The law requires that the contractor  
18 give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given  
19 you a 'Notice of the Seven-Day Right to Cancel.' "

20 (vi) The notice shall be accompanied by a completed form in duplicate, captioned "Notice  
21 of Cancellation," which shall also be attached to the agreement or offer to purchase and be easily  
22 detachable, and which shall contain the following statement written in the same language, e.g.,  
23 Spanish, as used in the contract:

24 [Text of statement omitted]

25 18. Section **7159.5** of the Code states, in pertinent part:

26 This section applies to all home improvement contracts, as defined in Section 7151.2,  
27 between an owner or tenant and a contractor, whether a general contractor or a specialty  
28 contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the



1 transaction.

2 (a) Failure by the licensee or a person subject to be licensed under this chapter, or by his or  
3 her agent or salesperson to comply with the following provisions is cause for discipline:

4 ...

5 (3) If a down payment will be charged, the down payment may not exceed one thousand  
6 dollars (\$1,000) or 10 percent of the contract amount, whichever is less.

7 ...

8 (5) Except for a downpayment, the contractor may neither request nor accept payment that  
9 exceeds the value of the work performed or material delivered.

10 19. Section **7161** of the Code states, in pertinent part:

11 It is a misdemeanor for any person to engage in any of the following acts, the commission  
12 of which shall be cause for disciplinary action against any licensee or applicant:

13 (a) Using false, misleading, or deceptive advertising as an inducement to enter into any  
14 contract for a work of improvement, including, but not limited to, any home improvement  
15 contract, whereby any member of the public may be misled or injured.

16 (b) Making any substantial misrepresentation in the procurement of a contract for a home  
17 improvement or other work of improvement or making any false promise of a character likely to  
18 influence, persuade, or induce any person to enter into the contract.

19 (c) Any fraud in the execution of, or in the material alteration of, any contract, trust deed,  
20 mortgage, promissory note, or other document incident to a home improvement transaction or  
21 other transaction involving a work of improvement.

22 ...

### 23 **COST RECOVERY/RESTITUTION**

24 20. Section **125.3** of the Code provides, in pertinent part, that the Board may request the  
25 administrative law judge to direct a licentiate found to have committed a violation or violations of  
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
27 enforcement of the case.

28 21. Section **11519(d)** of the Government Code provides that the Registrar may require

1 restitution of damages suffered as a condition of probation in the event probation is ordered.

2 **SHALHOOB PROJECT**

3 22. On or about January 10, 2010, an individual contacted Napoleon and Bonita Shalhoob  
4 by telephone on behalf of Respondent Elite. The individual falsely claimed that Respondent Elite  
5 was affiliated with PG&E, and offered to arrange for an "audit" of the Shalhoobs' windows,  
6 furnaces and A/C unit.

7 23. On or about January 20, 2010, David Wolff, an unlicensed salesperson working for  
8 Respondent Elite, met with the Shalhoobs at their home in Hayward, California. Wolff falsely  
9 claimed to be affiliated with PG&E, and informed the Shalhoobs that they could take advantage  
10 of cash vouchers and rebates then being offered by PG&E. The vouchers and rebates described  
11 by Wolff did not actually exist. Wolff provided estimates on forms that were misleading in that  
12 they appeared to be official forms affiliated with PG&E. Wolff obtained personal financial  
13 information from the Shalhoobs, ostensibly for use in processing an estimate.

14 24. Without receiving permission from the Shalhoobs, Respondent Elite applied for a  
15 loan in the Shalhoobs' name. Also without permission, Respondent Elite applied for, and caused  
16 to be issued, a credit card the name of Napoleon Shalhoob and Elite Conservation Services.

17 25. On or about February 4, 2010, an individual named Richard Hooper, acting as a  
18 salesman on behalf of Respondent Elite, met with the Shalhoobs at their residence. Hooper  
19 falsely claimed that Respondent Elite was affiliated with Enalasis, a PG&E partner, and falsely  
20 claimed that Respondent Elite is a PG&E subcontractor. Hooper drafted a contract between  
21 Respondent Elite and the Shalhoobs for replacement of the home's furnace system. The offer  
22 included a rebate that was to come from PG&E. Respondent Elite was not, in fact, authorized to  
23 offer, contract for or sell such a rebate item on behalf of PG&E. The contract price was  
24 \$7,466.00. Hooper requested and received a downpayment of \$3,733.00 from the Shalhoobs.

25 26. On or about February 10, 2010, the Shalhoobs learned that Respondent Elite was not,  
26 in fact, associated with PG&E or with Analasis. They contacted Respondent Elite and canceled  
27 the contract. Respondent Elite then demanded payment and threatened to place a lien on the  
28 Shalhoob home.



1 **FIRST CAUSE FOR DISCIPLINE**

2 (Contracting Under False Name)

3 27. Respondent Elite is subject to disciplinary action under section 7117 of the Code in  
4 that it purported to contract under the name of PG&E and/or Enalasy, rather than under  
5 Respondent Elite's name as set forth on its license.

6 **SECOND CAUSE FOR DISCIPLINE**

7 (Employment of Unlicensed Salesperson)

8 28. Respondent Elite is subject to disciplinary action under section 7154 of the Code in  
9 that it employed an unlicensed salesperson to sell a home improvement contract to the Shalhoobs.

10 **THIRD CAUSE FOR DISCIPLINE**

11 (Excessive Payments)

12 29. Respondent Elite is subject to disciplinary action under Code sections 7115 and 7159.5,  
13 subdivisions (a)(3) and (a)(5), in that on the Shalhoob project, Respondent Elite requested and  
14 received a down payment in excess of that allowed by law and received progress payments that  
15 exceeded the value of the work performed or material delivered.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 (Falsehood and Misrepresentation)

18 30. Respondent Elite's contractor's license is subject to disciplinary action under Code  
19 section 7161 in that Respondent Elite used false, misleading and deceptive advertising as an  
20 inducement to enter into the Shalhoob contract, and made substantial misrepresentations in the  
21 procurement for said project that were likely to influence, persuade or induce the Shalhoobs to  
22 enter into said contract.

23 **FIFTH CAUSE FOR DISCIPLINE**

24 (Contract Form Violations)

25 31. Respondent Elite is subject to disciplinary action under Code section 7159, in that on  
26 the Shalhoob project, it failed to comply with subdivisions of that Code, as follows:

- 27 a. Subdivision (c)(3)(B), notice of how to send 3-day notice of cancellation.  
28 b. Subdivision (c)(4), statement regarding lien releases.

- c. Subdivision (c)(6), notice regarding performance and payment bonds.
- d. Subdivision (d)(7), heading and description of project.
- e. Subdivision (d)(8), statement regarding downpayment.
- f. Subdivision (d)(9), statement regarding progress payments.
- g. Subdivision (d)(10), specification of commencement of contract.
- h. Subdivision (d)(11), specification of completion date of contract.
- i. Subdivision (d)(13), notice regarding extra work and change orders.
- j. Subdivision (e), required notices regarding commercial general liability insurance; workers' compensation; change-order work; mechanics' liens; the Contractors' State License Board; and cancellation rights.

#### **CASALAINA PROJECT**

32. On or about February 10, 2010, an individual contacted Vincent Casalaina by telephone on behalf of Respondent Elite. The individual falsely claimed that Respondent Elite was affiliated with PG&E, and offered to arrange for an audit of the Mr. Casalaina's windows.

33. On or about February 16, 2010, John Valperga, an unlicensed salesperson working for Respondent Elite, met with Mr. Casalaina at his home in Berkeley, California. Valperga falsely claimed to be affiliated with PG&E, and wore a badge bearing the PG&E logo. He informed Mr. Casalaina that he could take advantage of cash vouchers and rebates then being offered by PG&E. Valperga provided estimates on forms that were misleading in that they appeared to be official forms affiliated with PG&E. Valperga obtained personal financial information from Mr. Casalaina, ostensibly for use in processing an estimate.

34. Without receiving permission from Mr. Casalaina, Respondent Elite applied for a loan in Mr. Casalaina's name. Also without permission, Respondent Elite applied for, and caused to be issued, a credit card in the name of Vincent Casalaina and Elite Conservation Services.

#### **SIXTH CAUSE FOR DISCIPLINE**

(Contracting Under False Name)

35. Respondent Elite is subject to disciplinary action under section 7117 of the Code in that it purported to contract under the name of PG&E and/or Enalasys, rather than under



Respondent Elite's name as set forth on its license.

**SEVENTH CAUSE FOR DISCIPLINE**

(Employment of Unlicensed Salesperson)

36. Respondent Elite is subject to disciplinary action under section 7154 of the Code in that it employed an unlicensed salesperson to attempt to sell a home improvement contract to Vincent Casalaina.

**EIGHTH CAUSE FOR DISCIPLINE**

(Falsehood and Misrepresentation)

37. Respondent Elite's contractor's license is subject to disciplinary action under Code section 7161 in that Respondent Elite used false, misleading and deceptive advertising as an inducement to enter into a contract with Vincent Casalaina, and made substantial misrepresentations in the attempted procurement for said project that were likely to influence, persuade or induce the Vincent Casalaina to enter into said contract.

**LEE PROJECT**

38. On or about December, 2009, Victoria Lee received a mail flyer which claimed that Elite Conservations Services was affiliated with PG&E. Ms. Lee contacted Respondent Elite at the number listed in the flyer and set up an appointment at her home in order to provide an estimate for the replacement of the home's furnace.

39. On or about December 5, 2009, Marcus Filippi, an unlicensed salesperson working for Respondent Elite, met with Ms. Lee at her home in San Leandro, California. Filippi represented himself to be a "field inspector." He caused Ms. Lee to believe that Respondent Elite was affiliated with PG&E. Filippi informed Ms. Lee that she could take advantage of cash vouchers and rebates then being offered by PG&E. Filippi obtained personal financial information from Ms. Lee, ostensibly for use in processing an estimate.

40. Without receiving permission from the Ms. Lee, Respondent Elite applied for a loan in the Ms. Lee's name. Also without permission, Respondent Elite applied for, and caused to be issued, a credit card in the name of Victoria Lee and Elite Conservation Services.

41. On or about December 15, 2009, an individual named Roger Kilby, identifying

1 himself as a "field inspector" for Respondent Elite, met with Ms. Lee at Ms. Lee's residence.  
2 Kilby wrote a contract for \$3,995.00 for replacement of the home's furnace. Ms. Lee signed the  
3 contract.

4 42. On or about January, 2010, Ms. Lee contacted Respondent Elite to cancel the  
5 contract. No work had been performed on the contract at that time. Respondent Elite then  
6 demanded payment and threatened to place a lien on the home.

7 43. On or about January 19, 2010, Respondent Elite billed the entire contract amount  
8 (\$3,995.00) to the above-referenced joint credit card. Ms. Lee disputed the charge.

9 44. On or about March 5, 2010, Respondent Elite sent Ms. Lee what purported to be a  
10 mechanic's lien document. The document falsely stated that Respondent Elite had completed the  
11 contract, and demanded the amount of \$3,995.00.

#### 12 **NINTH CAUSE FOR DISCIPLINE**

13 (Contracting Under False Name)

14 45. Respondent Elite is subject to disciplinary action under section 7117 of the Code in  
15 that it purported to contract under the name of PG&E and/or Enalasys, rather than under  
16 Respondent Elite's name as set forth on its license.

#### 17 **TENTH CAUSE FOR DISCIPLINE**

18 (Employment of Unlicensed Salesperson)

19 46. Respondent Elite is subject to disciplinary action under section 7154 of the Code in  
20 that it employed an unlicensed salesperson to sell a home improvement contract to Victoria Lee.

#### 21 **ELEVENTH CAUSE FOR DISCIPLINE**

22 (Excessive Payments)

23 47. Respondent Elite is subject to disciplinary action under Code sections 7115 and 7159.5,  
24 subdivisions (a)(3) and (a)(5), in that on the Lee project, Respondent Elite requested and received  
25 payment in excess of that allowed by law that exceeded the value of the work performed or  
26 material delivered.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 (Falsehood and Misrepresentation)

3 48. Respondent Elite's contractor's license is subject to disciplinary action under Code  
4 section 7161 in that Respondent Elite used false, misleading and deceptive advertising as an  
5 inducement to enter into the Lee contract, and made substantial misrepresentations in the  
6 procurement for said project that were likely to influence, persuade or induce the owner to enter  
7 into said contract.

8 **THIRTEENTH CAUSE FOR DISCIPLINE**

9 (Contract Form Violations)

10 49. Respondent Elite is subject to disciplinary action under Code section 7159, in that on  
11 the Lee project, it failed to comply with subdivisions of that Code, as follows:

- 12 a. Subdivision (c)(3)(B), notice of how to send 3-day notice of cancellation.  
13 b. Subdivision (c)(4), statement regarding lien releases.  
14 c. Subdivision (c)(6), notice regarding performance and payment bonds.  
15 d. Subdivision (d)(7), heading and description of project.  
16 e. Subdivision (d)(8), statement regarding downpayment.  
17 f. Subdivision (d)(9), statement regarding progress payments.  
18 g. Subdivision (d)(10), specification of commencement of contract.  
19 h. Subdivision (d)(11), specification of completion date of contract.  
20 i. Subdivision (d)(13), notice regarding extra work and change orders.  
21 j. Subdivision (e), required notices regarding commercial general liability insurance;  
22 workers' compensation; change-order work; mechanics' liens; the Contractors' State  
23 License Board; and cancellation rights.

24 **MILLER PROJECT**

25 50. On or about May 24, 2010, an individual contacted Nicole Miller by telephone on  
26 behalf of Respondent Elite. The individual falsely claimed that Respondent Elite was affiliated  
27 with PG&E, and offered to arrange for an audit of the Ms. Miller's windows.

28 51. On or about May 27, 2010, Sig Martinson, an unlicensed salesperson working for

1 Respondent Elite, met with Ms. Miller at her home in Berkeley, California. Martinson falsely  
2 claimed that Respondent Elite was a "referral business partner" of PG&E. He provided an  
3 estimate to Ms. Miller for replacement of five windows. The estimate included various rebates  
4 and tax incentives purportedly available through PG&E.

5 **FOURTEENTH CAUSE FOR DISCIPLINE**

6 (Contracting Under False Name)

7 52. Respondent Elite is subject to disciplinary action under section 7117 of the Code in  
8 that it purported to contract under the name of PG&E and/or Enalaysys, rather than under  
9 Respondent Elite's name as set forth on its license.

10 **FIFTEENTH CAUSE FOR DISCIPLINE**

11 (Employment of Unlicensed Salesperson)

12 53. Respondent Elite is subject to disciplinary action under section 7154 of the Code in  
13 that it employed an unlicensed salesperson to attempt to sell a home improvement contract to  
14 Nicole Miller.

15 **SIXTEENTH CAUSE FOR DISCIPLINE**

16 (Falsehood and Misrepresentation)

17 54. Respondent Elite's contractor's license is subject to disciplinary action under Code  
18 section 7161 in that Respondent Elite used false, misleading and deceptive advertising as an  
19 inducement to enter into a contract with Nicole Miller, and made substantial misrepresentations in  
20 the attempted procurement for said project that were likely to influence, persuade or induce the  
21 Nicole Miller to enter into said contract.

22 **ALBERTSON PROJECT**

23 55. On or about February, 2010, Carroll and Bruce Albertson received an unsolicited  
24 phone call from a company representing itself to be PG&E. They made an appointment for a  
25 representative to come to their home in Santa Rosa, California.

26 56. On or about February 20, 2010, an unlicensed salesman who identified himself as  
27 "Evan" came to the Albertson home. Evan stated that he worked for PG&E. He wrote an  
28 estimate for replacement of the Albertsons' furnace, and provided the Albertsons with a form



1 with Respondent Elite's name on it. Evan asked for personal financial information from the  
2 Albertsons.

3 57. On or about March 9, 2010, Marcus Filippi, an unlicensed salesman who worked for  
4 Respondent Elite, met with the Albertsons at their home. Filippi identified himself as a "field  
5 engineer." Filippi informed the Albertsons that they could take advantage of cash vouchers and  
6 rebates then being offered by PG&E. Filippi added various items to the proposal that Evan had  
7 prepared, and drafted a contract. The contract price was \$9,415.00. Filippi asked for and  
8 received a downpayment of \$3,071.64 from the Albertsons.

9 58. On or about March 31, 2010, the Albertsons contacted Respondent Elite to cancel the  
10 contract. No work had been performed on the contract at that time. Respondent Elite then  
11 demanded payment and threatened to place a lien on the home. Respondent refused to refund the  
12 previously-paid downpayment (\$3,071.64).

13 59. On or about May 4, 2010, Respondent Elite sent the Albertsons what purported to be  
14 a mechanic's lien document. The document falsely stated that Respondent Elite had completed  
15 the contract, and demanded the amount of \$9,415.00.

16 **SEVENTEENTH CAUSE FOR DISCIPLINE**

17 (Contracting Under False Name)

18 60. Respondent Elite is subject to disciplinary action under section 7117 of the Code in  
19 that it purported to contract under the name of PG&E and/or Enalaysys, rather than under  
20 Respondent Elite's name as set forth on its license.

21 **EIGHTEENTH CAUSE FOR DISCIPLINE**

22 (Employment of Unlicensed Salesperson)

23 61. Respondent Elite is subject to disciplinary action under section 7154 of the Code in  
24 that it employed an unlicensed salesperson to sell a home improvement contract to the Albertsons.

25 **NINETEENTH CAUSE FOR DISCIPLINE**

26 (Excessive Payments)

27 62. Respondent Elite is subject to disciplinary action under Code sections 7115 and 7159.5,  
28 subdivisions (a)(3) and (a)(5), in that on the Albertson project, Respondent Elite requested and

1 received payment in excess of that allowed by law that exceeded the value of the work performed  
2 or material delivered.

3 **TWENTIETH CAUSE FOR DISCIPLINE**

4 (Falsehood and Misrepresentation)

5 63. Respondent Elite's contractor's license is subject to disciplinary action under Code  
6 section 7161 in that Respondent Elite used false, misleading and deceptive advertising as an  
7 inducement to enter into the Albertson contract, and made substantial misrepresentations in the  
8 procurement for said project that were likely to influence, persuade or induce the owner to enter  
9 into said contract.

10 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

11 (Contract Form Violations)

12 64. Respondent Elite is subject to disciplinary action under Code section 7159, in that on  
13 the Albertson project, it failed to comply with subdivisions of that Code, as follows:

- 14 a. Subdivision (c)(3)(B), notice of how to send 3-day notice of cancellation.
- 15 b. Subdivision (c)(4), statement regarding lien releases.
- 16 c. Subdivision (c)(6), notice regarding performance and payment bonds.
- 17 d. Subdivision (d)(7), heading and description of project.
- 18 e. Subdivision (d)(8), statement regarding downpayment.
- 19 f. Subdivision (d)(9), statement regarding progress payments.
- 20 g. Subdivision (d)(10), specification of commencement of contract.
- 21 h. Subdivision (d)(11), specification of completion date of contract.
- 22 i. Subdivision (d)(13), notice regarding extra work and change orders.
- 23 j. Subdivision (e), required notices regarding commercial general liability insurance;  
24 workers' compensation; change-order work; mechanics' liens; the Contractors' State  
25 License Board; and cancellation rights.

26 ///

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28 ///



1 **DISCIPLINARY CONSIDERATIONS**

2 65. To determine the degree of discipline, if any, to be imposed on Respondents,  
3 Complainant alleges aggravating circumstances:

4 66. On or about July 25, 2007, in San Francisco Superior Court case number CGC  
5 05442178, the People of the State of California and various defendants including Elite  
6 Conservations Services, Michael Phong Nguyen and others, entered into a Stipulated Final  
7 Judgment and Permanent Injunction. A copy of this document is attached hereto as Exhibit A.  
8 The injunction prohibits the conduct by Respondent Elite that is described by and at issue in this  
9 Accusation.

10 **OTHER MATTERS**

11 67. Pursuant to sections 7097 and 7098 of the Code, if license number 750199, issued to  
12 Elite Conservation Services, Michael Phong Nguyen, sole owner, is suspended or revoked, the  
13 Registrar may suspend or revoke, without notice, any other license issued in the name of Elite  
14 Conservation Services or Michael Phong Nguyen, or for which Elite Conservation Services or  
15 Michael Phong Nguyen furnished the qualifying experience and appearance.

16 68. Pursuant to sections 7121 and 7121.5 of the Code, if discipline is imposed on license  
17 number 750199, issued to Elite Conservation Services, Michael Phong Nguyen, sole owner to,  
18 then Michael Phong Nguyen shall be prohibited from serving as an officer, director, associate,  
19 partner, or qualifying individual of any licensee during the time the discipline is imposed, and any  
20 licensee which employs, elects, or associates Michael Phong Nguyen shall be subject to  
21 disciplinary action.

22 69. Michael Phong Nguyen, while serving as the sole owner and qualifier of Respondent  
23 Elite, had knowledge of or participated in the acts or omissions which constitute cause for  
24 discipline against said Respondent.

25 **PRAAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
27 and that following the hearing, the Registrar of Contractors issue a decision:

28 1. Revoking or suspending Contractor's License Number 750199, issued to Elite

- 1 Conservation Services, Michael Phong Nguyen, sole owner;
- 2 2. Revoking or suspending Contractor's License Number 915083, issued to Elite
- 3 Conservation Services, Inc., dba Advanced Conservation Services, Michael Phong
- 4 Nguyen, RMO/CEO/Pres.;
- 5 3. Prohibiting Michael Phong Nguyen from serving as an officer, director, associate,
- 6 partner, or qualifying individual of any licensee during the period that discipline is
- 7 imposed on license Number 750199;
- 8 4. Revoking or suspending any other license for which Elite Conservation Services or
- 9 Michael Phong Nguyen is furnishing the qualifying experience or appearance;
- 10 5. As a condition of probation in the event probation is ordered, ordering restitution of all
- 11 damages according to proof suffered by Napoleon and Bonita Shalhoob, Vincent
- 12 Casalaina, Victoria Lee, Nicole Miller and Carroll and Bruce Albertson;
- 13 6. Ordering , as a condition of restoration of license Numbers 750199 and 915083,
- 14 restitution of all damages suffered by Napoleon and Bonita Shalhoob, Vincent
- 15 Casalaina, Victoria Lee, Nicole Miller and Carroll and Bruce Albertson;
- 16 7. Ordering Respondents to pay the Registrar of Contractors his costs in the investigation
- 17 and enforcement of the case according to proof at the hearing, pursuant to Business and
- 18 Professions Code section 125.3;
- 19 8. Ordering Respondents to provide the Registrar with a listing of all contracting projects
- 20 in progress and the anticipated completion date of each;
- 21 9. Taking such other and further action as deemed necessary and proper.

22 DATED:

September 27, 2010

for

  
WOOD ROBINSON  
Enforcement Supervisor I  
Contractors' State License Board  
Department of Consumer Affairs  
State of California  
Complainant



## **EXHIBIT A**

1 KAMALA D. HARRIS, State Bar No. 146672  
District Attorney  
2 JUNE D. CRAVETT, State Bar No. 105094  
Assistant District Attorney  
3 MAXWELL S. PELTZ, State Bar No. 183662  
Assistant District Attorney  
4 732 Brannan Street  
San Francisco, California 94103  
5 Telephone: (415) 551-9549  
Facsimile: (415) 551-9504

6 *Attorneys for Plaintiff, the People of the State of California*

**FILED**  
San Francisco County Superior Court

JUL 25 2007

GORDON PARK-LI, Clerk  
BY                      Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 CITY AND COUNTY OF SAN FRANCISCO  
10 UNLIMITED JURISDICTION  
11

12  
13 PEOPLE OF THE STATE OF  
14 CALIFORNIA,

15 Plaintiff,

16 vs.

17 PUBLIC UTILITY CONTRACTING  
SERVICES, INC., a California Corporation;  
18 MICHAEL PHONG NGUYEN aka PHONG  
HONG NGUYEN, an individual, dba  
19 PUBLIC UTILITY CONTRACTING  
SERVICES, PUC SERVICES and ELITE  
20 CONSERVATION SERVICES; ELITE  
CONSERVATION SERVICES, INC.;  
21 EDWARD CHEE, an individual; JUANITA  
VALENZUELA BACA, an individual; and  
22 DOES ONE through TWENTY-FIVE,  
inclusive,

23 Defendants.  
24

Case No. CGC 05442178

STIPULATED FINAL JUDGMENT AND  
PERMANENT INJUNCTION

25 Plaintiff, the People of the State of California, appearing through its attorney Kamala  
26 D. Harris, District Attorney for the City and County of San Francisco, by Maxwell S. Peltz,  
27 Assistant District Attorney, and defendants Michael Phong Nguyen, also known as Phong

STIPULATED FINAL JUDGMENT  
AND PERMANENT INJUNCTION



1 Hong Nguyen, an individual and doing business as Public Utility Contracting Services, PUC  
2 Services, and Elite Conservation Services; Public Utility Contracting Services, Inc., a  
3 conditionally dissolved California corporation; and Elite Conservation Services, Inc., a  
4 California corporation (hereinafter collectively "NGUYEN DEFENDANTS") appearing  
5 through their attorney, David Golden, Esq.;

6 The above-referenced parties having stipulated and consented that this Stipulated Final  
7 Judgment and Permanent Injunction ("JUDGMENT") may be entered prior to the taking of  
8 proof, without trial or adjudication or any issues of law or fact, and without this JUDGMENT  
9 constituting any evidence or admission of liability or wrongdoing by the NGUYEN  
10 DEFENDANTS regarding any issue of law or fact alleged herein; and

11 This Court having considered the pleadings and the Stipulation for Entry of Final  
12 Judgment, and for good cause appearing therefrom;

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

14 1. This Court has jurisdiction over the subject matter hereof and the above-  
15 referenced parties hereto.

16 2. The District Attorney for the City and County of San Francisco has the authority  
17 under the laws of the State of California to maintain this action for the protection of the People  
18 of the State of California concerning the conduct alleged in the First Amended Complaint.

19 3. This JUDGMENT entered into by the above-referenced parties has been  
20 reviewed by the Court, and the Court finds that it has been entered into in good faith and is in  
21 all respects just, reasonable, equitable and adequate to protect the public from the occurrence  
22 in the future of the conduct alleged in the First Amended Complaint, and to remedy the  
23 conduct alleged in the First Amended Complaint.

24 4. Pursuant to the Stipulation for Entry of Final Judgment and Permanent  
25 Injunction, plaintiff and the NGUYEN DEFENDANTS have agreed to the entry of this  
26 JUDGMENT.

27 5. The injunctive provisions of this JUDGMENT are applicable to the NGUYEN

1 DEFENDANTS, their successors, assigns, employees, servants, agents and representatives,  
2 and to all persons acting under, through, by, in concert with, or on behalf of, them or any of  
3 them, who have actual or constructive notice of the injunctive provisions of this JUDGMENT.

4 **PERMANENT INJUNCTION**

5 6. Pursuant to the provisions of Business and Professions Code sections 17200,  
6 17203, 17500 and 17535, the NGUYEN DEFENDANTS, and each of them, are hereby  
7 permanently enjoined and restrained from directly or indirectly doing any of the following:

8 A. Making or disseminating, or causing to be made or disseminated, any  
9 false, misleading or deceptive statements, claims or representations in connection with the  
10 business of providing, promoting, selling, advertising, replacing, repairing, upgrading or  
11 installing windows, furnaces, heating systems, air conditioners, or air conditioning systems,  
12 including but not limited to the following:

13 (1) falsely implying affiliations, associations, agreements,  
14 arrangements or partnerships with federal, state or local governmental agencies or public  
15 utilities – including, without limitation, using company names or acronyms that imply such a  
16 governmental affiliation or referring to oneself as “California’s” followed by the name of a  
17 company;

18 (2) falsely implying certification or training by any governmental  
19 agency or utility;

20 (3) falsely stating or implying that any of the NGUYEN  
21 DEFENDANTS is an “EnergyStar Partner” or “EnergyStar Service Provider;”

22 (4) falsely stating or implying that any of the NGUYEN  
23 DEFENDANTS administers any government-sponsored or utility-sponsored program;

24 (5) failing clearly, promptly and adequately to disclose to consumers  
25 the nature and purpose of the NGUYEN DEFENDANTS’ business – that is, that the  
26 NGUYEN DEFENDANTS are private contractors and intend to sell home improvement  
27 products and services;



- 1 (6) misrepresenting the existence, availability, nature, amounts,  
2 sources or limitations of government-sponsored or utility-sponsored rebates, entitlements,  
3 incentives or assistance programs;
- 4 (7) representing that a customer qualifies for a government-  
5 sponsored, utility-sponsored or manufacturer-sponsored rebate that does not exist or for which  
6 the customer does not qualify;
- 7 (8) using any of the following words or phrases in any advertisement  
8 or website: "accepting applications"; "utility program"; "utility savings program"; "utility  
9 savings plan"; "entitlement"; "assistance program"; "rebate program"; or "replacement  
10 program";
- 11 (9) using the term "voucher" in any advertisement or website unless  
12 that advertisement or website specifies that the voucher is provided for customer referrals;
- 13 (10) misrepresenting the NGUYEN DEFENDANTS' role in obtaining  
14 government-sponsored or utility-sponsored rebates, entitlements, incentives or assistance  
15 programs for consumers;
- 16 (11) misrepresenting the NGUYEN DEFENDANTS' role in obtaining  
17 manufacturer-sponsored rebates or the amount or availability of such rebates;
- 18 (12) misrepresenting deadlines for customers to obtain government-  
19 sponsored, utility-sponsored, or manufacturer-sponsored rebates;
- 20 (13) misrepresenting the limited availability of government-sponsored,  
21 utility-sponsored, or manufacturer-sponsored rebates;
- 22 (14) misrepresenting the existence, availability or amounts of  
23 government-sponsored, utility-sponsored or manufacturer-sponsored rebates to seniors;
- 24 (15) misrepresenting the criteria for qualifying for any government-  
25 sponsored, utility-sponsored or manufacturer-sponsored rebate or program;
- 26 (16) inducing consumers to purchase limited types or brands of home  
27 improvement products by misrepresenting that those products, chosen by the NGUYEN

1 DEFENDANTS, are the only ones that qualify for government-sponsored rebates,  
2 entitlements, incentives or assistance programs or by overstating the amounts of such rebates,  
3 entitlements, incentives or assistance programs available to consumers;

4 (17) inducing consumers into signing contracts through false  
5 representations, including but not limited to false representation that the papers consumers are  
6 asked to sign are simply applications to determine eligibility for rebates, entitlements,  
7 incentives or assistance programs or requests for estimates;

8 (18) engaging in misleading practices with respect to manufacturers'  
9 warranties, including misrepresenting that all repair and replacement work under warranty  
10 must be performed by NGUYEN DEFENDANTS or misrepresenting the costs to consumers  
11 of any repair or replacement work performed under warranty;

12 (19) threatening to assert mechanic's liens against consumers' homes  
13 or to foreclose on consumers' homes when the NGUYEN DEFENDANTS have no legal right  
14 to do so, because they have not commenced work or because they have not complied with the  
15 statutory prerequisites for asserting a mechanic's lien; or

16 (20) misrepresenting that the NGUYEN DEFENDANTS may legally  
17 remove, transport or dispose of asbestos-containing material without required permits, licenses  
18 or governmental authorizations.

19 B. Engaging in any unlawful, unfair or misleading pricing practices,  
20 including but not limited to the use of false or misleading representations – either orally or in  
21 contracts, invoices, receipts or financing agreements – regarding the availability or amounts of  
22 purported government-sponsored, utility-sponsored or manufacturer-sponsored rebates,  
23 entitlements, incentives or assistance programs.

24 C. Violating the federal Truth in Lending Act, 15 U.S.C. § 1638 *et seq.*  
25 (“TILA”) or Regulation Z, 12 C.F.R. §§ 226.17-226.18, by entering into consumer credit  
26 transactions without making all of the disclosures required by TILA and Regulation Z.

27 D. Using threats of mechanic's liens and foreclosures in order to induce



1 consumers to perform on contracts or to pay cash in order to be released from contracts when  
2 the NGUYEN DEFENDANTS have no legal right to assert mechanic's liens or initiate  
3 foreclosures because they have not commenced work or have not complied with the statutory  
4 prerequisites for asserting mechanic's liens.

5 E. Acting in the capacity of a contractor under a name that is not the name  
6 of the licensee as set forth upon the license issued under Business and Professions Code  
7 Division 3, Chapter 9.

8 F. Inducing or requiring consumers to sign authorizations purporting to  
9 authorize the NGUYEN DEFENDANTS to remove asbestos-containing material without  
10 required permits, licenses or governmental authorizations, or purporting to release the  
11 NGUYEN DEFENDANTS from liability arising therefrom.

12 G. Using unlicensed or unpermitted subcontractors to perform asbestos  
13 removal work.

14 H. Violating any of the laws or regulations of the State of California  
15 governing the removal, transportation or disposal of asbestos.

16 I. Failing to include a California contractors' license numbers in  
17 advertisements, in violation of Business and Professions Code section 7030.5.

18 J. Violating Business and Professions Code sections 17200 *et seq.* or 17500  
19 *et seq.*

20 7. Within thirty (30) days of entry of this JUDGMENT, the NGUYEN  
21 DEFENDANTS shall send a notice by first class mail to all customers of Public Utility  
22 Contracting Services – also known as PUC Services (hereinafter “PUC SERVICES”). The  
23 notice shall state that Elite Conservation Services (and any successor thereto) will honor all  
24 warranties provided to PUC SERVICES customers. The notice shall provide a name, address  
25 and telephone number to which PUC SERVICES customers may direct all warranty claims  
26 and inquiries. The NGUYEN DEFENDANTS shall honor all warranties provided to PUC  
27 SERVICES customers according to the terms of such warranties.

## CIVIL PENALTIES

8. The NGUYEN DEFENDANTS shall jointly pay a total of Twenty-Seven Thousand Eight Hundred Fifty-Two Dollars and Eighty-Seven Cents (\$27,852.87) in civil penalties, which shall be paid as follows: Eight Thousand Seven Hundred Twenty-Six Dollars and Forty-Four Cents (\$8,726.44) shall be paid through the Chapter 13 Trustee in *In re Michael Phong Nguyen* Case No. 05-29672-D-13L; the NGUYEN DEFENDANTS shall jointly pay the remaining Nineteen Thousand One Hundred Twenty-Six Dollars and Forty-Three Cents (\$19,126.43) by check as stated in paragraph 9, *infra*. These sums are to be paid pursuant to Business and Professions Code section 17200 and 17500, under sections 17206 and 17536 of said code.

9. All of the payments required under paragraph 8, above, shall be made by check, payable to the "San Francisco District Attorney's Office," and shall be sent to:

Maxwell Peltz, Assistant District Attorney  
Office of the District Attorney  
732 Brannan Street  
San Francisco, CA 94103

10. The civil penalties awarded pursuant to this JUDGMENT shall not be discharged in any bankruptcy. This JUDGMENT is res judicata regarding the dischargeability of the civil penalties awarded herein, should dischargeability be raised in a bankruptcy court. the NGUYEN DEFENDANTS have agreed, through their stipulation to this JUDGMENT, that they have waived their rights under the U.S. Constitution to have the dischargeability of the penalties awarded herein heard by a United States Bankruptcy Court.

11. Within thirty (30) days of the payment of all sums stated in paragraph 8, *supra*, the People shall inform the above-referenced Chapter 13 Trustee in writing that the People withdraw the remainder of their bankruptcy claim.

## COSTS AND FEES

12. The NGUYEN DEFENDANTS shall pay all court costs associated with their appearance in this action, including any fee for the filing of the stipulation for entry of



1 judgment. In all other respects, the parties hereto shall bear their own costs and attorneys'  
2 fees, except as provided in paragraph 13, below.

3 13. Any and all attorneys' fees and costs incurred by Plaintiff as a result of any  
4 violation of this JUDGMENT – including but not limited to any fees and costs incurred in  
5 enforcing payment of penalties pursuant to paragraph 8 – shall be recoverable as costs  
6 pursuant to California Code of Civil Procedure sections 685.040 and 1033.5(a)(10)(A).

7 **RETENTION OF JURISDICTION**

8 14. Jurisdiction is retained for the purpose of enabling the Plaintiff or the NGUYEN  
9 DEFENDANTS to apply to the Court at any time for such further orders and directions as are  
10 necessary or appropriate for the carrying out of this JUDGMENT, the modification or  
11 termination of any of the injunctive provisions herein, the enforcement of compliance with this  
12 JUDGMENT, or the punishment of violations of this JUDGMENT. The Court retains  
13 jurisdiction over this matter to enforce this injunction for the entire period of its duration, and  
14 for such other and further orders as may be required to modify or to carry out any of the terms  
15 of this JUDGMENT.

16 15. The JUDGMENT shall take effect immediately upon entry thereof, without  
17 further notice to the NGUYEN DEFENDANTS.

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19 Dated: July 25, 2007

  
Judge of the Superior Court

21 **PATRICK J. MAHONEY**